

Warren C. Havens
Telesaurus Holdings GB LLC

Via email, December 11, 2002

To: David Furth, Kathleen Ham, Richard Arsenault, Julie Knapp

Cc: Janice Obuchowski (counsel, Progeny), James Stobaugh

Re: RM-10403 (902-928 MHz)

Dear Mr. Furth, Ms. Ham, Mr. Arsenault, and Mr. Knapp:

Concurrent with sending you this email, I will file a copy on ECFS as an Ex Parte filing in RM-10403 (the "Proceeding"). Thank you for your work on this Proceeding.

I understand that in the near future the Bureau will be acting upon the petition for rulemaking submitted by Progeny LMS LLC (commencing the Proceeding) by deciding whether or not to open a rule making docket to consider rule changes in 902-928 MHz, at least the LMS Multilateration blocks in this band ("LMS-M").

For myself and Telesaurus Holdings GB LLC, each of whom are LMS-M licensees in this band, I submitted Comments, Reply Comments, and various Ex Parte filings in the Proceeding.

I do not oppose any relief Progeny may seek for its LMS-M licenses. However, as discussed below, it does not appear to me that rulemaking for the entire LMS-M service is appropriate at this time, as long potential relief is available for specific LMS-M licensees and licenses based on waivers and possibly forbearance and other means.¹ I understand that such relief is available upon presentation of satisfactory showings.

For reasons I gave in my filings in the Proceeding, I will seek appropriate relief in relation to my specific "ATLIS" proposal for this band, a plan in development as I explained in my filings. It is a broad plan that has and continues to involve extensive dealings with industry trade groups, technology and equipment providers, system integrators, federal entities involved in Homeland Security, NTIA, and others. I expect to modify the plan per such dealings. I continue to pursue this plan and have proprietary developments underway, including for advanced technology and deployments for proof-of-concept and other purposes.

¹ Among other appropriate public-interest reasons for certain relief for specific LMS-M services and deployments are various findings and recommendations of the recent FCC Spectrum Policy Task Force November 2002 Report. It looks to the public interest above other interests, and suggests a framework for consistency and dependability, all of which is very encouraging.

I have not gotten any feedback on this ATLIS plan from any other LMS-M licensee, within and outside of this Proceeding. Also, no other LMS-M licensee has disclosed in this docket, or otherwise disclosed in any manner I am aware of, any plan as to what services they intend to pursue with their LMS-M licenses, what technology they are pursuing for any planned services, or other general or specific description of what they are undertaking to develop and use their LMS-M spectrum.

I have concern that the FCC can and will only once in many years undertake rulemaking in this band, and I believe that the best time for such rulemaking is when the licensees, at least those holding a clear majority of all spectrum, clearly set forth their planned uses of the spectrum, demonstrate their progress and obstacles to date, and in relation thereto, seek specific needed rule changes.

Also, if, as can be expected, the Commission adopts new policy along the lines of the Spectrum Policy Task Force November 2002 Report's recommendations, such policy may provide the framework for more efficient and lasting rulemaking in 902-928 MHz. That is, as this Report makes clear, the Commission does not have a well-defined spectrum policy at this time, establishing such is a Commission priority, and when it has this in place, or is further along in adopting key elements, it should provide a framework for appropriate regulatory reform in the various wireless services, including LMS-M.

Thus, my preference is to seek appropriate relief when needed specific to certain licenses, markets, technology, and service in my LMS-M development plan, and as this plan matures, I may seek appropriate rulemaking, hopefully, (i) in consensus or concert with other LMS-M licensees who may also have by then substantial plans, development and specific needs to present, and (ii) at a time when the Commission has adopted or is closer to adopting a spectrum policy to guide such rulemaking. Participation in a rulemaking at this time would divert resources from this priority. It may lead to premature conclusions: rules that do not fit well the needs of particular LMS-M licensee plans or Commission spectrum policy now in the making, and may thus need further amendment and give rise to excessive speculative contention.

Also, by that time, I would have (and other LMS-M licenses could have) undertaken various attempts to minimize potential disruptive interference from and to Part 15 devices and systems by various means and arrangements. As I have said in my filings in this proceeding, I seek a constructive dialog and solutions for this purpose, and I presented some initial ideas for this purpose. While a rulemaking may be needed at some point to deal with unresolved issues, it is not a good forum to attempt solutions and mitigate contention.

Further, since Federal entities via NTIA have priority use rights in this band (radiolocation use rights that are not much used, but still in effect), NTIA should be well informed of and ideally participate in any rulemaking, and, I believe, should be consulted by LMS-M licensees when pursuing their plans. NTIA did not participate in this Proceeding. Outside of the Proceeding, I have consulted with and will continue to

consult with NTIA and various Federal entities regarding my ATLIS plan and other plans. These plans have goals that include serving Federal wireless needs with 902-928 MHz. If NTIA and Federal entities choose to pursue these or similar plans, then based on their priority rights, their choice will have a major effect in the use of 902-928 MHz, independent of any FCC rulemaking. Again, as with other matters noted above, my concern is that rulemaking at this time seems premature: it is premature to obtain effective participation of NTIA and Federal entities it serves, since without presenting them with specific plans (uses, technology, deployments, etc.) that at least protect their interests (if not protect and promote them), I do not believe they will be responsive. If they are not responsive and in agreement, then development of LMS-M and its service to the public will be at greater risk, whether under current or amended rules or other forms of relief. I will continue to present my plans to NTIA, and as with Part 15 interests, pursue plans that attempt to minimize contention and facilitate mutually beneficial results.

Thus, for reasons given above, I do not believe it is appropriate to commence rulemaking at the present time regarding all LMS-Multilateration licenses.

Sincerely,

Warren Havens
Individually, and as President of
Telesaurus Holdings GB, LLC

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